

EXHIBIT A

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VOTRE RÉF.
112701-427

NOTRE RÉF.
FC-IP/SDI/lod
NO 7144/US/PCT

VEVEY, March 29, 2007

Re: UNITED STATES : Patent Application No. 10/500187
in the name of Nestec S.A.

Dear Bob,

As discussed with Sarah Dixon, here is an original signed Affidavit.

Yours faithfully,

A handwritten signature in black ink, appearing to be "David Lopez", written over a horizontal line.

NESTEC S.A.
David LOPEZ

RECEIVED
BELL, BOYD & LLOYD
INTELLECTUAL PROPERTY DOCKET

RAL. APR 01 2007

ATTY: DMB
DOCKET: 112701-427

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Wuersch et al.
Appl. No.: 10/500,187
Conf. No.: 5338
Filed: June 25, 2004
Title: FOOD PRODUCT WITH HIGH VISCOSITY
Art Unit: 1761
Examiner: C. Kam
Docket No.: 112701-427

AFFIDAVIT UNDER 37 C.F.R. § 1.132

Sir:

I hereby state as follows:

1. My experience and qualifications are as follows:
I got a PhD in organic chemistry in 1970 and a master in biochemistry in 1969.
Since 36 years, I worked in Nestlé food science research and development and finally in manufacturing management. The field of research covers all carbohydrate field (from sugars to fibres) with special emphasis on nutrition, resulting in more than 60 original publications and review papers and 12 patent applications.
2. I am one of the named inventors of the above-identified patent application and am therefore familiar with the inventions disclosed therein.
3. I have reviewed the outstanding Office Action dated November 7, 2006 pending against the above-identified patent application. In addition to considering the outstanding Office Action, I have reviewed the reference cited therein as well as the pending claims.
4. The present invention resides in the unexpected discovery that a food product containing certain viscous soluble fibres, cereal bran or oat bran and oat bran concentrate in the proportions specified develops an unexpectedly high viscosity when mixed with water at 37°C,

that is, at body temperature. In practical terms, this means that when the food product containing these ingredients is ingested, it will develop a high viscosity in the gastrointestinal tract without the need to add high amounts of a cold soluble, high-viscosity fiber which gives undesirable organoleptic properties to the food product. This enables food products that are palatable and efficacious in terms of generating a highly viscous mixture when ingested to be provided.

5. The present invention relates to synergistically increasing the viscosity of a food product to provide a food product suitable for delaying glucose absorption or appearance in blood and/or to maintain raised glucose levels while avoiding high glucose peaks. Upon ingestion, the viscous soluble fiber serves to "lock up" glucose released by digestion of carbohydrates so as to reduce the rate of absorption of the glucose from the intestinal tract into the blood.

6. As summarized in the Examples and Figures of the present specification, the combination of oat bran and oat bran concentrate with relatively small amounts of viscous soluble fibre unexpectedly causes the increased viscosity necessary to properly delay glucose absorption, as discussed herein above. Even more specifically, a surprisingly high viscosity was achieved with mixtures of a viscous soluble fiber, oat bran concentrate and oat bran in specific amounts, as shown by Example 2 and Figure 1, line D. This viscosity is shown to be much greater in the instances when one or two of the constituents (e.g., Figure 1, lines B and C) are used on their own. Therefore, although oat bran contains only small amounts of soluble fiber, and the fiber is not usually dissolved by a mild treatment, a surprisingly high viscosity food product is achieved by the combination of specific amounts of oat bran with a viscous soluble fiber and oat bran concentrate.

7. *Ringe* fails to disclose or suggest reducing the soluble fiber content of a food product to improve its palatability while at the same time still obtaining the beneficial physiological effects of soluble fiber linked to the viscosity generating properties resulting from the addition of oat bran. In fact, at no place in the disclosure does *Ringe* even recognize the physiological significances of the viscosity of the ingested product as described herein above.

8. *Ringe* also fails to disclose or suggest a food product comprising in percent by weight of dry matter, 0.5 to about 5% of a viscous soluble fiber, 2 to about 20% oat bran concentrate, and 10 to about 30% cereal bran.

9. Additionally, *Ringe* fails to disclose or suggest using 1 to about 4%, in percent by weight of dry matter, of a viscous soluble fiber, 4 to about 16% oat bran concentrate, and 10 to about 30% oat bran in the preparation of the food product.

10. *Ringe* also fails to disclose or suggest feeding an individual a food product comprising by weight of dry matter, 0.5 to about 5% of a viscous soluble fiber, 2 to about 20% oat bran concentrate, and 10 to about 30% cereal bran.

11. *Ringe* teaches cereal compositions and ready-to-eat cereals fabricated therefrom that contain high levels of both soluble and insoluble fiber. *Ringe* also teaches a food product that contains soluble fiber, oat bran concentrate and oat bran and methods for their preparation. *Ringe* does not disclose individual amounts of oat bran concentrate or oat bran. Because *Ringe* teaches products generally containing soluble fiber, oat bran concentrate and oat bran and does not disclose specific amounts of oat bran concentrate or oat bran, *Ringe* cannot teach the specific amounts of oat bran concentrate or oat bran discussed herein above or disclosed in the present application.

12. *Ringe* further teaches cereal compositions containing a high concentration of soluble fiber that retain desirable organoleptic attributes or qualities. *Ringe* teaches that the desired organoleptic qualities are attributed, in part, to the use of barley beta glucan as a soluble fiber source instead of beta glucan derived from oat bran. *Ringe* fails to recognize the physiological significances of the unexpected and surprisingly high viscosity achieved by the addition of specific amounts of oat bran as discussed above and disclosed in the present application. Because *Ringe* teaches that the highly viscous nature of beta glucan derived from oat bran can cause undesirable attributes in ready-to-eat cereals, *Ringe* cannot teach the

physiological significances resulting from the unexpected and surprisingly high viscosities achieved with mixtures of a highly-viscous soluble fiber, oat bran concentrate and oat bran mixed with water at body temperature.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001, Title 18, United States Code, and that willful false statements may jeopardize the validity of this patent and any patent issuing therefrom.

Date: March 27, 2007

P. Wuerst

Print Name

P. WUERST